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In The
Supreme Court of the United States

OCTOBER TERM 1966

No. 792

CITY OF MESA, a municipal corporation,

Petitioner,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Agricultural Improvement District,

Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner will not reargue or reassert matters then and now relied upon by Petitioner as justifying this Petition which we believe were adequately stated for Petition purposes in its Petition. Certain claims made by Respondent justify a brief reply.

I

"Respondent's General Immunity from Suit"

City, in support of its claim that there is a real public interest in the question as to the soundness of the decision of the Arizona Supreme Court interpreting and applying federal law, pointed out

that the decision puts all assets of what is in fact a large electric public utility serving over 130,000 customers, with a bonded indebtedness of over $110,000,000, with electric revenues of over $41,000,000 in 1965 beyond the reach of the process of *any Court*. An injured party, be the claim for personal injury or business wrong, can only look to Congress and a private relief bill for his or its damages since no property of the District may be seized absent the consent of the United States.

City also pointed out that this major public utility is likewise freed from effective regulation of and control over its rates and charges for utility service by state agency or judicial supervision. The Constitution of Arizona, Article XV, exempts municipal corporations from supervision by the Arizona Corporation Commission. The Arizona Supreme Court in *City of Phoenix v. Wright,* 52 Ariz. 227, 80 P.2d 390, confirmed this exemption. But in *Kasun v. City of Phoenix,* 54 Ariz. 470, 97 P.2d 210, the Arizona Supreme Court recognized that the Arizona Legislature can supervise, or provide for the supervision of, rates of municipalities, and in *Arizona Corporation Commission v. Mountain States T. & T. Co.,* 71 Ariz. 404, 228 P.2d 749, the Arizona Court recognized the power of a court of equity to supervise the reasonableness of rates charged by a public utility or fixed for it by a regulatory body (but not fix rates). In *Town of Wickenburg v. Sabin,* 68 Ariz. 75, 200 P.2d 342, the Arizona Supreme Court ruled that when a municipal corporation becomes a public utility it becomes subject to supervision by a court of equity the same as a private utility as to discriminatory practices and as to the reasonableness of all of its dealings with the public. Certainly the rationale of the decision below forecloses even these modest restraints upon the utility activity of this municipal corporation suddenly draped with the cloak of sovereign immunity.

Respondent's only answer to the complete discharge from needed restraints imposed by local laws which the decision below affords Respondent is "The respondent has never contended, and

the Arizona Supreme Court has never held, that the District enjoys a general immunity from suit." (P. 17 Respondent's Brief). In support of this statement Respondent by footnote 7 cites two Arizona cases, *Peterson v. Salt River etc. District,* 96 Ariz 1, 391 P.2d 567 (1964) and *Nyberg v. Salt River etc. District,* 91 Ariz. 397, 372 P.2d 727 (1962).

Both of these cases were decided prior to the decision in this case and in neither of the cases was the question here decided raised. Both were decided by the same court which decided the first *City of Mesa* case, 92 Ariz. 91, 373 P.2d 722 (1962) in which case the Court held

> "The authority of the City (Mesa) to acquire by condemnation the interests of the District is clear * * " (P. 104, 92 Ariz., P. 731, 373 P.2d),

a holding which it ignored in this case, except to note that Petitioner (Appellant) relied upon the holding.

Plainly with the announcement of this decision by the Arizona Supreme Court "a new day dawned" for the District insofar as its amenability to the laws and courts of Arizona, federal and state, is concerned.

The state itself under this decision may not cross a District right of way or interfere with other District property in building roads except with its permission, since no court may entertain a condemnation action even on suit of the state which itself made possible the organization of the District. Certainly no city can enforce zoning requirements as to underground installation of wires and similar regulations even in the exercise of the state's police power.

The mischiefs which can spring from the misapplication of federal law by the court below cannot now be all foreseen, but plainly the whim of the District's governing body rather than legal restraints will limit or enlarge the area wherein such mischiefs will arise.

It is true, of course, that theoretically perhaps the District may

still be sued but certainly not effectively. The rationale of the decision below is that *all* property and assets of the District (and of every other federal reclamation project for that matter) may not be taken or interfered with by judicial or state action except with the consent of the United States.

While the ruling below simulated the form of a ruling upon a question of parties, its practical effect is to confer the sovereign immunity of the United States upon the District.

II

"Title is in the United States"

The 1917 agreement turned over "the care, operation and maintenance of the irrigation works" *as such works then existed.* Specifically the language used requiring maintenance of the "works" (Pet. C3) was "as the same is now, at its own cost and without cost to the United States." Changes in "said works" could not be made without the Secretary's written consent (Pet. C3) but "It may, however, construct additional works at its own cost without the necessity of procuring the assent of the Secretary * * * " Add to the foregoing the provision (Pet. C2) that "all the rents, issues, profits, revenue and income, including all income from power and power privileges growing out of or arising from the operation and maintenance of the project and every part thereof" * * * "from the time of the taking over of the care, operation and maintenance of said project * * * " by the Association should be had and received by the Association "to its own use and benefit" and the claim that all additions to the "works" made by the Association and the District from 1917 to 1966 with funds to which the United States had by contract released all interest or right is demonstrated as almost frivolous.

CONCLUSION

Much as Petitioner is tempted to attack *seriatim* Respondent's numerous other contentions, Petitioner knows this would involve

substantially restating arguments and authorities already once stated in its Petition and hence an unjustified waste of the Court's time.

Petitioner respectfully prays that the Writ issue.

Respectfully submitted,

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December 29, 1966